

# In The United States Court of Federal Claims

No. 12-507L

(Filed: January 23, 2013)

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ARTHUR P. BAILEY, JR. and  
CATHY BAILEY, et al.,  
For Themselves and As Representative of  
a Class of Similarly Situated Persons,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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## ORDER

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On January 18, 2013, parties filed a joint proposed plan for providing notice to class. Pursuant to the proposal, the attached class notice and entry of appearance form shall be distributed to potential class members. Accordingly:

1. On or before February 6, 2013, the class notice and entry of appearance form shall be mailed to each potential class member;
2. In order to be included in the class, each potential class member must return the entry of appearance form on or before May 7, 2013;
3. On or before June 6, 2013, class counsel shall file an Amended Complaint identifying all those individuals and entities who submitted timely and complete entries of appearance and those who had previously engaged class counsel stating that they wish to join or opt into this class action;
4. On or before June 6, 2013, class counsel shall serve upon defendant a claims book, which shall include the following information for each class member: (a) a copy of the entry of appearance completed and submitted by the class member to class

counsel (for those who enter through the class notice and opt-in procedure); (b) the property or parcel ID number assigned by the city or local government to the property; (c) a map showing the location of the property relative to the subject right-of-way; (d) title documentation showing that the class member was the owner of land adjacent to or traversed by the subject right-of-way on January 20, 2012, and (e) title documentation showing that the class member is the owner of a portion of the subject right-of-way that the railroad acquired and held only as an easement;

5. On or before August 5, 2013, the United States shall provide its comments and/or objections to the claims book to class counsel; and
6. On or before September 4, 2013, the parties shall file a joint status report proposing a schedule for future proceedings.

**IT IS SO ORDERED.**

s/ Francis M. Allegra

Francis M. Allegra

Judge

## **IMPORTANT LEGAL NOTICE**

### **NOTICE OF OPPORTUNITY TO PARTICIPATE IN CLASS ACTION**

**A court has authorized this Notice. This is not a solicitation from a lawyer.**

**TO: All persons who, on January 20, 2012, owned an interest in lands constituting part of the railroad corridor or right-of-way on which a rail line was formerly operated by Mississippi & Skuna Valley Railroad, LLC ("MSVR") between milepost 21.0 at Bruce Junction and milepost 0.0 at Bruce, in Yalobusha and Calhoun Counties, Mississippi, a distance of 21.0 miles (the "Railroad Line"), and who claim a taking of their rights to possession, control and enjoyment of such lands due to the operation of the "rail banking" provisions of the National Trails System Act, 16 U.S.C. § 1247(d).**

**Pursuant to Rule 23** of the Rules of the United States Court of Federal Claims, you are hereby notified:

The purpose of this Notice is to inform you of a class action lawsuit (Class Action) brought against the United States by other property owners, to advise you of how your rights may be affected by this action, and to instruct you on the procedure to join this class action if you choose to do so.

The attorneys for the plaintiffs (Class Counsel) have been permitted to send this Notice by the United States Court of Federal Claims.

The class action, titled BAILEY, et al. v. UNITED STATES, Case No. 12-507 L, is pending in the Court of Federal Claims. It was brought on behalf of a class consisting of all persons who, on January 20, 2012, owned an interest in lands constituting part of the railroad corridor or right-of-way on which a rail line was formerly operated by Mississippi & Skuna Valley Railroad, LLC ("MSVR") between milepost 21.0 at Bruce Junction and milepost 0.0 at Bruce, in Yalobusha and Calhoun Counties, Mississippi, a distance of 21.0 miles, and who claim a taking of their rights to possession, control and enjoyment of such lands due to the operation of the "rail banking" provisions of the National Trails System Act, 16 U.S.C. § 1247(d). The Plaintiffs seek to recover from the Defendant, the United States, for themselves and the class, the value of the land allegedly appropriated by the United States.

On January 23, 2013, Judge Francis M. Allegra of the United States Court of Federal Claims ruled that the claim **will proceed as a class action**.

Judge Allegra designated J. Robert Sears, 1010 Market St., Suite 950, St. Louis, Missouri 63101, Telephone (314) 231-2925 and Facsimile (314) 231-4857, as counsel for the class.

Calls are also received at (888) 235-6193 (toll free). He may also be contacted by e-mail at [sears@bscr-law.com](mailto:sears@bscr-law.com).

This Notice is given to you because you may be a member of the above described class whose rights may be affected by this lawsuit. This Notice is not an expression of opinion by the Court concerning the merits of this case. Instead this Notice is intended merely to advise you of the pendency of the action and your rights with respect to the lawsuit.

To be considered eligible to join the Class Action, then **by May 7, 2013, you must mail, fax, or otherwise deliver to Class Counsel a completed Entry of Appearance, which is attached to this notice.** If you do so and are otherwise eligible, Class Counsel will enter your appearance in this Class Action.

If you become a class member, a judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. If you do not join in the Class Action, please be aware that the last day to file your own action is January 20, 2018; otherwise, your claim would be barred by the statute of limitations.

Whether you are still the owner, or have sold the property, has no impact on your eligibility. However, you must have owned the property on January 20, 2012, to be considered eligible. This litigation does not and will not affect the existence, appearance, or use of the railroad right of way or any recreational trail located on that right of way.

If you qualify and your claim is successful, the compensation sought for you will be the value of the property interest allegedly appropriated from you by the United States.

**THERE IS NO ASSURANCE THAT A JUDGMENT WILL BE GRANTED IN YOUR FAVOR OR IN FAVOR OF ANY CLAIMANT OR THAT PAYMENT WILL BE MADE TO YOU OR ANY MEMBER OF THE CLASS. NEVERTHELESS, ANY JUDGMENT(S), WHETHER FAVORABLE OR NOT, SHALL BIND THE MEMBERS OF THE CLASS.**

You are not required to pay any money to be included in this action. If the case is unsuccessful, you will have no obligation for attorneys' fees or costs. Only if the Class Counsel are successful in obtaining an award for you, will they be paid from the greater of (1) a contingency fee equal to 35% of the total recovery or (2) the attorney's fees and litigation expenses - to the extent the Court determines that such fees and expenses are reasonable - that may be paid by the United States pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4654 (c).

If you wish to join this Class Action, you must mail, fax or deliver the completed Entry of Appearance to Class Counsel (address provided at the bottom of the Entry of Appearance). **Please make sure it is postmarked by May 7, 2013; otherwise, you will not be eligible to join the Class Action.** The Court will include you in the class action **only** if you request inclusion and provide the information requested in the Entry of Appearance.

All pleadings and other papers filed in this action are available for inspection at the office of the Clerk of the Court.

**DO NOT CONTACT THE COURT OR ITS CLERK IF YOU HAVE QUESTIONS.**  
**CONTACT COUNSEL FOR THE CLASS OR YOUR OWN COUNSEL. COUNSEL FOR THE CLASS HAS ESTABLISHED A PHONE LINE FOR QUESTIONS. THAT PHONE NUMBER IS (888) 235-6193.**

**ENTRY OF APPEARANCE**

**This form must be mailed, faxed, or delivered to Class Counsel by May 7, 2013.**

I, \_\_\_\_\_,  
upon information and belief, state that I owned land on January 20, 2012, that was next to or traversed by the Railroad Line, and I wish to join the Class Action to have my claim pursued against the United States.

**Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in this Entry of Appearance, but sign in your own name as a representative of that entity. If you have co-owners, it is recommended that all co-owners sign this form or a separate form in order to ensure there is no dispute about whether all co-owners' claims have been made.**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Street Address of Property that is  
Next to the Railroad Line: \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

The following information is helpful but optional:

Home Telephone: \_\_\_\_\_

Work Telephone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**PLEASE RETURN YOUR SIGNED ENTRY OF APPEARANCE TO (a stamped, addressed envelope has been provided for your convenience):**

Bailey et al. v. United States Class Action  
c/o J. Robert Sears  
Baker Sterchi Cowden & Rice, L.L.C.  
1010 Market Street - Suite 950  
St. Louis, MO 63101

You can also fax your signed claim form to: 314-231-4857.  
Hand delivery is also acceptable.

**If you have any questions, please call Class Counsel, at (888) 235-6193.**